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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex Parte Communication*

In re Amendment of Section 2.106 of the Commission's Rules to
Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service
ET Docket No. 95-18

Dear Ms. Salas:

In Consolidated Reply Comments to the Oppositions and Comments filed in response to their various Petitions for Further Reconsideration of the Commission's *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order* in the above-referenced proceeding, the ICO USA Service Group ("IUSG") and ICO Services Limited ("ICO") contend that there is no "credible" opposition to their proposals that the Commission freeze BAS license applications and condition all licenses and renewals granted after March 14, 1997 on the licensee's payment of its own relocation expenses.¹

To the contrary, the Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB") objected to these proposals in their Joint Opposition to IUSG's Petition for Expedited Reconsideration and their Joint Comments on Oppositions to the Petitions for Further Limited Reconsideration.² MSTV and NAB also comprehensively refuted these proposals at pages 18-20 of their Joint Reply Comments, a copy of which is attached for your reference. The attached discussion clearly

¹ See Consolidated Reply to Comments and Oppositions of ICO USA Service Group, ET Docket No. 95-18, at 2-4 (Mar. 8, 1999); ICO Services Limited Consolidated Reply Comments to Oppositions to and Comments on Petitions for Reconsideration and Clarification, ET Docket No. 95-18, at 7-10 (Mar. 8, 1999).


² See Joint Comments on Oppositions to Petitions for Further Limited Reconsideration, ET Docket No. 95-18, at 2 n.3 (Mar. 4, 1999); Joint Opposition of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters to Petition for Expedited Reconsideration of BT North America, Inc. et al., ET Docket No. 95-18, at 4 n.12 (Feb. 22, 1999).


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demonstrates that, contrary to ICO's and IUSG's assertions, it would severely undermine the public interest to freeze BAS license applications and/or to condition new or renewal BAS licenses on self-payment of relocation costs. Accordingly, MSTV and NAB reiterate that the Commission should reject ICO's and IUSG's proposals and require MSS applicants to bear the reasonable and actual costs of relocating all BAS incumbents as of a date certain specified by the Commission or agreed upon by the parties in relocation compensation negotiations.

Respectfully submitted,


Henry L. Baumann
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Counsel, NAB


Jonathan D. Blake
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Attorneys for MSTV

Attachment

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Ms. Regina Keeney, Chief, International Bureau
Mr. Dale Hatfield, Chief, Office of Engineering and Technology
Mr. Bruce Franca, Deputy Chief, Office of Engineering and Technology
Mr. Rebecca Dorch, Deputy Chief, Office of Engineering and Technology
Mr. Sean White, Senior Attorney, Office of Engineering and Technology
Mr. Francis D.R. Coleman, ICO Global Communications
Ms. Cheryl A. Tritt, Counsel for ICO Services Limited
Ms. Cheryl Lynn Schneider, BT North America, Inc.
Ms. Joan B. Griffin, Counsel for BT North America, Inc.
Ms. Jennifer A. Smolker, Hughes Telecommunications and Space Company
Mr. Charles Mier y Teran, Telecomunicaciones de Mexico
Mr. Norman P. Leventhal et al., Counsel for TRW, Inc.

between the parties as to what constitutes “comparable facilities,” it is the Commission, not the new entrant, that makes the determination of comparability.⁴⁸

IV. THE COMMISSION SHOULD NOT FREEZE BAS LICENSE APPLICATIONS OR CONDITION LICENSE RENEWAL ON SELF-RELOCATION.

Several MSS commenters urge the Commission to freeze BAS license applications in the 1990-2025 MHz band, effective as early as January 1995.⁴⁹ Some also ask the Commission to condition licenses or renewals granted after the release of the *First Report & Order/FNPRM* in this proceeding on the licensee’s payment of its own relocation expenses.⁵⁰ Similarly, Boeing suggests that MSS operators be required to compensate only for BAS equipment that was in service at the time the Commission announced that 2 GHz spectrum would be reallocated to emerging technologies (presumably either 1992 or 1997).⁵¹ The primary rationale for these proposals appears to be that such mechanisms to limit MSS liability for relocation costs would be fair because BAS licensees have been on notice that they would have to relocate out of the 2 GHz spectrum.

The problem with this rationale is that BAS licensees were only “on notice” that they would be relocated *upon payment of their relocation costs by the new MSS*

⁴⁸ See *MSTV/NAB Comments*, at 19.

⁴⁹ See *IUSG Comments*, at 29-30 (urging freeze effective November 25, 1998, July 22, 1997 or January 31, 1995; suggesting that it would be appropriate to freeze BAS applications because Commission at one point sought comment on whether freeze should be imposed during negotiations and “sporadic discussions between MSS and BAS licensees are in fact already taking place”); *ICO Comments*, at 7 (urging freeze effective March 14, 1997); *Inmarsat Comments*, at 3-4 (urging no additional BAS licenses or modifications or extensions of existing licenses); *TMI Comments*, at 5-6 (urging freeze on all future BAS applications or secondary status for all BAS facilities in 1990-2025 MHz licensed after January 1999).

⁵⁰ *IUSG Comments*, at 27-29; *ICO Comments*, at 7.

⁵¹ *Boeing Comments*, at 2.

entrants. Moreover, the fact that BAS licensees may have had notice of the possibility of a freeze or conditional licensing as of the *First Report & Order/FNPRM* does not justify imposing such measures in the absence of any showing that they would reasonably facilitate the relocation process.

A freeze on BAS applications would completely paralyze the expansion of a valuable service on which the public has come to rely for local news and sports programming. Because most BAS licensees are authorized to use the entire 1990-2110 MHz band, a freeze on applications for 1990-2025 MHz would effectively freeze *all* BAS license applications. And any attempt to limit new licensees to only five of the seven channels in the existing channelization plan during the transition to the narrower allocation would seriously complicate and often frustrate frequency coordination in an already overcrowded band. Thus, at a time when new broadcast networks are emerging and the public is demanding more and better live coverage of news and other events, such action would unreasonably limit broadcasters' ability to offer ENG services.⁵²

In addition, requiring BAS incumbents to pay their own relocation costs for licenses obtained or equipment deployed in spectrum allocated for MSS would be unfair because broadcasters who were aware that they would eventually have to relocate their BAS facilities to accommodate MSS did not have the option of applying for licenses or deploying

⁵² Similarly unreasonable is ICO's and IUSG's proposal that all BAS license renewals granted after a freeze is implemented be conditioned on the licensee's converting to secondary status as of January 1, 2000. *ICO Comments*, at 7; *IUSG Comments*, at 30. In light of the significant delays in this proceeding occasioned by intervening congressional action, it would be unfair (and inconsistent with both the compensation principle and the public interest, which demands continued ENG services) for the Commission to make BAS licensees secondary to MSS at a point in time when they cannot reasonably be expected to have made the equipment changes necessary to begin operations in the dramatically-reduced 2025-2110 MHz band.

equipment in alternative BAS spectrum. For example, broadcasters could not apply for licenses to operate only in the spectrum that would be retained for BAS because it was not clear what that spectrum would be and, in any event, BAS licensees ordinarily must be able to operate in the entire BAS band to facilitate coordination and efficient spectrum use.

Finally, there is no evidence that broadcasters are applying for new licenses and “enter[ing] into [BAS] operations in the existing bands with minimally adequate equipment – in anticipation of reaping a windfall benefit in the form of upgraded and relocated equipment furnished by MSS entrants.”⁵³ And given the anticipated complexity of the BAS relocation, it is unlikely that broadcasters would engage in such activities. However, if it ever appears that any broadcasters are seeking to exploit the relocation process, the Commission can address the issue at that time. In the meantime, the Commission should not disrupt efforts to improve public information services by freezing BAS applications or conditioning new licenses on the licensee’s payment of its own relocation costs.

CONCLUSION

In accordance with the foregoing and the Joint Broadcasters’ initial comments, the Commission should affirm the application of the *Emerging Technologies* relocation compensation principle to the BAS relocation and adopt a relocation plan that effectively implements the compensation principle while taking into account circumstances unique to the BAS relocation. The Commission should not freeze BAS license applications or condition new licenses on the licensees’ payment of their own relocation costs.

⁵³ *Inmarsat Comments*, at 3.